Joe Lombardo
*Governor*

Richard Whitley, MS
*Director*

DEPARTMENT OF HEALTH AND HUMAN SERVICES
NEVADA DIVISION of PUBLIC and BEHAVIORAL HEALTH

Cody Phinney, MPH
*Administrator*

Ihsan Azzam, Ph.D., M.D.
*Chief Medical Officer*

# NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulations of the Board of Health
LCB File No. R035-22 relating to Environmental Health Section's regulations relating to Hemp.

NOTICE IS HEREBY GIVEN that the State Board of Health will hold a public hearing at 9:00 a.m. on September 1, 2023, in conjunction with the State Board of Health meeting. The purpose of the hearing is to receive comments from all interested persons regarding the Amendment of regulations that pertain to Chapter 439 of Nevada Administrative Code (NAC),

The State Board of Health meeting will be conducted via videoconference and in person at physical locations beginning at 9:00 a.m. on Friday, September 1, 2023, at the following locations:

Physical Meeting Locations:
*Southern Nevada Health District (SNHD)*
Red Rock Trail Rooms A & B
280 S. Decatur Blvd., Las Vegas, NV 89107

Nevada Division of Public and Behavioral Health
Hearing Room 303, 3rd Floor
4150 Technology Way, Carson City, NV 89706

Meeting Link:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_NGY3ZGM2ZjUtMmQ5NC00MzI2LWFhMDMtNmJhZmRjNzk1MWE3%40thread.v2/0?context=%7b%22Tid%22%3a%22e4a340e6-b89e-4e68-8eaa-1544d2703980%22%2c%22Oid%22%3a%22e2f9f008-841c-437d-b037-927c30ea003e%22%7d
*Please Note: If you experience technical difficulties connecting online, please call into the meeting to participate by phone.*

Join By Phone:
+1 (775) 321-6111
Phone Conference ID: 196 838 95#

The following information is provided pursuant to the requirements of NRS 233B.0603.

1. The changes to NAC Chapter 439 in LCB File No. R035-22 are needed to comply with Senate Bill (SB) 114 (2021) and SB 204 (2019) and clarify that the use of hemp in a food product:

- Is approved and determined by the United States Food and Drug Administration to be safe or generally recognized as safe for use as an ingredient in food intended for human consumption.
- Has been tested by an independent testing laboratory certified by the Department of Taxation under the provisions of NRS 453A.368 and NAC 453A.650 through NAC 453A.678, inclusive;
- is manufactured in accordance with state and federal law and regulation, and the regulations adopted by reference in Section 19; and,
- Is labeled in a manner that is not false or misleading and is in accordance with the applicable provisions of Chapters 446 and 585 of NRS and federal law.

2. Anticipated effects on the business which NAC 439 regulates:
*A. Adverse effects*: None. The proposed regulations will have a negligible impact on small businesses.
*B. Beneficial:* Testing and labeling requirements will ensure that products are appropriate and safe.
*C. Immediate:* None reported.
*D. Long-term:* None reported.

Anticipated effects on the public:
A. *Adverse*: None.
B. *Beneficial:* None reported.
C. *Immediate*: None reported.
D. *Long-term:* None reported.

3. There were two (2) Responses to the small business impact statement. Neither stated that this regulation would impair their business.

4. There is no anticipated cost to the agency for enforcement of the proposed regulations.

5. The proposed regulations are in accordance with federal or other law or regulation.

6. The proposed regulations do not establish a new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the Board of Health may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Secretary of the Board Health, no later than August 24, 2023, at the following address:
Secretary, State Board of Health
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706


4150 Technology Way, Suite 300 ● Carson City, NV 89706 ● (775) 684-4200 ● Fax (775) 687-7570 ● dpbh.nv.gov

Written comments, testimony, or documentary evidence will not be accepted at the time of the hearing. The purpose of this requirement is to allow Board members adequate time to review the documents.

If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board of Health may proceed immediately to act upon any written submissions.

A copy of the notice and proposed regulations are on file for inspection and/or may be copied at the following locations during normal business hours:

1. Nevada Division of Public and Behavioral Health - 4150 Technology Way, First Floor Lobby, Carson City, NV 89701
2. Nevada Division of Public and Behavioral Health - 4126 Technology Way, Carson City, NV 89701
3. Nevada State Library & Archives - 100 Stewart Street, Carson City, NV 89701

A copy of the regulations and small business impact statement can be found on-line by going to: https://dpbh.nv.gov/Reg/Trending_EHS/Trending_Health_Topics/

A copy of the public hearing notice can also be found at Nevada Legislature's web page: https://www.leg.state.nv.us/app/notice/a/

Copies may be obtained in person, by mail, or by calling the Division of Public and Behavioral Health at (775) 684-1030 in Carson City or (702) 486-6515 in Las Vegas.

Per NRS 233B.064(2), upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.



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*Chief Medical Officer*

# MEMORANDUM

DATE: July 28, 2023

TO: Jon Pennell, DVM, Chairperson
State Board of Health

FROM: Cody Phinney, Administrator
Division of Public and Behavioral Health

RE: Consideration and adoption of the proposed Regulation amendment to Nevada Administrative Code (NAC) Chapter 429, Legislative Counsel Bureau (LCB) File No. R035-22

PURPOSE OF THE AMENDMENT

The proposed changes set forth in LCB File No. R035-33 will revise Chapter 439 of the Nevada Administrative Code. The change is a result of Senate Bill (SB) 114 (2021) and SB 204 (2019) passed by the Nevada Legislature. Pursuant to NRS 233B.0608 (2)(a), the Division of Public and Behavioral Health has requested input from Retail Food Establishments.

SUMMARY OF CHANGES TO THE NEVADA ADMINISTRATIVE CODE (NAC)

R035-22 seeks to make the following amendments to NAC 439:

• Unless otherwise required by federal law or regulation, a person shall not sell or offer for sale a hemp product that is processed in the state of Nevada unless that product: o Is an “approved hemp component” by the United States Food and Drug Administration (FDA) and has been determined to be safe or generally recognized as safe for use an ingredient for use in food intended for human consumption;

- Has been tested by an independent testing laboratory;
- Is processed in accordance with all applicable federal and state laws and regulations; and
- Is labeled in accordance with all federal and state laws and regulations.

• The hemp product will be deemed adulterated if: o The THC concentration of the hemp product exceeds the maximum THC concentration established by federal law for hemp;

- Levels of pesticides in the hemp product exceed what is specified by the State Department of Agriculture or Environmental Protection Agency;
- An unlisted or unapproved pesticide is present in the hemp product;
- The hemp product meets any other condition prescribed by federal or state law or regulations for being adulterated.

• Hemp products processed, sold, or offered for sale in Nevada must be tested by an independent testing laboratory certified by the Cannabis Compliance Board in the same way marijuana products are required to be tested. Testing must include an analysis of:

- The THC content of the hemp product; and
- The content of any other cannabinoid or terpenoid.

• The processor of a hemp product must:

- Keep the final certificate of analysis of the hemp product for at least 2 years after the product is sold; and
- Provide the certificate of analysis to the State upon request.

POSSIBLE OUTCOME IF PROPOSED AMENDMENT IS NOT APPROVED

If LCB File No. R035-22P is not approved, NAC Chapter 439 will not follow the requirements set forth in Senate Bill (SB) 114 and SB 204.

PUBLIC COMMENT RECEIVED

A Small Business Impact Questionnaire, along with a copy of the proposed regulation changes, was sent by email to more than 16,000 firms throughout the state. Out of the small-business impact questionnaires sent out when the questionnaire was distributed, two (2) responses were received. None of the respondents believe the regulations will have an adverse economic impact on their business.

PUBLIC WORKSHOP

A public workshop was held on Wednesday, March 1, 2023. There was 1 participant who attended the workshop virtually, and there were no comments.

STAFF RECOMMENDATION

Staff recommends the State Board of Health adopt the proposed regulation amendments to NAC 439, LCB File No. R035-22P.

PRESENTER

Teresa Hayes, Health Program Manager III, Environmental Health Section



4150 Technology Way, Suite 300 ● Carson City, NV 89706 ● (775) 684-4200 ● Fax (775) 687-7570 ● dpbh.nv.gov

**PROPOSED REGULATION**

**OF THE DEPARTMENT OF HEALTH**

**AND HUMAN SERVICES**

**LCB File No. R035-22**

March 30, 2022

EXPLANATION – Matter in ***italics*** is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§ 1-8, NRS 439.532, as amended by section 2 of Senate Bill No. 114, chapter 163, Statutes of Nevada 2021, at page 728.

A REGULATION relating to hemp; prescribing requirements concerning the testing and labeling of certain commodities or products containing hemp or cannabidiol that are intended for human consumption in this State; specifying when such a commodity or product is deemed to be adulterated; providing for the submission and investigation of complaints concerning such products; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law prohibits the sale or offer for sale of commodities or products containing hemp which are intended for human consumption or certain other commodities and products that purport to contain cannabidiol unless the commodities or products have been: (1) tested by an independent testing laboratory; and (2) labeled. Existing law requires the Department of Health and Human Services to adopt regulations: (1) requiring the testing and labeling of such commodities and products; and (2) identifying contaminants of certain such commodities or products which are foods and prescribe tolerances for such contaminants. (NRS 439.532, as amended by section 2 of Senate Bill No. 114, chapter 163, Statutes of Nevada 2021, at page 728) **Section 3** of this regulation defines the term "hemp product" to refer to those commodities and products containing hemp or cannabidiol that are regulated under existing law as described. **Section 6** of this regulation prohibits the sale or offer for sale of a hemp product that: (1) is not approved by the United States Food and Drug Administration or generally recognized as being safe for human consumption; (2) has not been tested by an independent testing laboratory; or (3) is not processed or labeled in accordance with state and federal law and regulations. **Section 7** of this regulation requires certain testing of hemp products.

Existing law prohibits: (1) the manufacture, sale or delivery, holding or offering for sale of any food, drug, device or cosmetic that is adulterated; and (2) the adulteration of any food, drug, device or cosmetic. (NRS 585.520) **Section 6** specifies when a hemp product is deemed to be adulterated.

**Section 8** of this regulation authorizes a consumer or public agency to submit a complaint concerning a hemp product that is processed, sold or offered for sale in this State to: (1) the local

health authority, if the hemp product is a food or dietary supplement; or (2) the Commissioner of Food and Drugs, if the hemp product is a drug or cosmetic. **Section 8** also: (1) provides for the investigation of the complaint; and (2) requires the health authority or Commissioner, as applicable, to take certain actions if the complaint is substantiated.

**Section 1.** Chapter 439 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this regulation.

**Sec. 2.** ***As used in sections 2 to 8, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.***

**Sec. 3.** ***"Hemp product" means a commodity or product containing hemp which is intended for human consumption or any other commodity or product that purports to contain cannabidiol with a THC concentration that does not exceed the maximum THC concentration established by federal law.***

**Sec. 4.** ***"Process" means to manufacture, store for distribution, package or repackage a hemp product.***

**Sec. 5.** ***"Processor" means a person or entity who processes a hemp product.***

**Sec. 6.** ***1. Unless federal law or regulation otherwise requires, a person shall not sell or offer for sale a hemp product that is processed in this State unless the hemp product:***

***(a) Has been determined by the United States Food and Drug Administration to be safe or generally recognized as safe for use as an ingredient in food intended for human consumption;***

***(b) Has been tested by an independent testing laboratory in accordance with section 7 of this regulation;***

*(c) Is processed in accordance with all applicable federal and state laws and regulations, including, without limitation, any applicable provisions of Title 21 of the Code of Federal Regulations; and*

*(d) Is labeled in accordance with all applicable federal and state laws and regulations, including, without limitation, any applicable provisions of Title 21 of the Code of Federal Regulations and chapters 446 and 585 of NRS.*

*2. A hemp product shall be deemed to be adulterated for the purposes of chapter 585 of NRS if:*

*(a) The THC concentration of the hemp product exceeds the maximum THC concentration established by federal law for hemp;*

*(b) A pesticide which occurs on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550 or is approved for use by the United States Environmental Protection Agency is present in the hemp product at a level which exceeds the level specified by the State Department of Agriculture or Environmental Protection Agency, as applicable;*

*(c) A pesticide which does not occur on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550 or is not approved for use by the United States Environmental Protection Agency is present in the hemp product; or*

*(d) The hemp product meets any other condition for adulteration prescribed by federal or state law or regulations.*

**Sec. 7.** *1. A hemp product that is processed, sold or offered for sale in this State must be tested by an independent testing laboratory certified by the Cannabis Compliance Board pursuant to NRS 678B.290 in the same manner as an equivalent marijuana product is*

*required by the regulations adopted pursuant to NRS 678B.290 to be tested. In addition to any other test required by that section, the testing must include, without limitation, an analysis of:*

*(a) The THC content of the hemp product on a dry weight basis; and*

*(b) The content of any other cannabinoid or terpenoid that is listed in the ingredients of the product or on the product labeling.*

*2. Except as otherwise provided in this section, the homogeneity of the THC content of a hemp product must be verified by testing multiple samples from a single production run. If the THC content of a production run of a hemp product has been verified by an independent testing laboratory pursuant to this section and the recipe of the product has not been changed, the homogeneity of the THC content of an additional production run of the product may be verified by testing a single unit or serving from the production run.*

*3. The processor of a hemp product shall:*

*(a) Retain the final certificate of analysis containing the results of the testing of the product required by this section for at least 2 years after the date on which the product is sold; and*

*(b) Provide the certificate of analysis to the Division upon request.*

*4. As used in this section:*

*(a) "Cannabinoid" means THC, tetrahydrocannabinolic acid, cannabidiol or cannabidiolic acid.*

*(b) "Terpenoid" means alpha-bisabolol, alpha-humulene, alpha-pinene, alpha-terpinolene, beta-caryophyllene, beta-myrcene, caryophyllene oxide, limonene or linalool.*

**Sec. 8.** *1. A consumer or a public agency may submit to:*

***(a) The health authority a complaint alleging that a hemp product that is a food or dietary supplement and is processed, sold or offered for sale in this State does not meet a requirement prescribed by section 6 of this regulation or is adulterated as described in that section.***

***(b) The Commissioner a complaint alleging that a hemp product that is a drug or cosmetic and is processed, sold or offered for sale in this State does not meet a requirement prescribed by section 6 of this regulation or is adulterated as described in that section.***

***2. The health authority or Commissioner, as applicable, shall investigate a complaint submitted pursuant to subsection 1 to the extent it deems appropriate. An investigation may include, without limitation, requiring the testing of the product in accordance with recognized laboratory standards for testing of the applicable type of hemp product approved by the health authority or Commissioner, as applicable. The processor of the product is responsible for the cost of the testing and may perform the testing itself or cause the testing to be performed by a third party. The processor or third party, whomever performs the test, shall notify the health authority or Commissioner, as applicable, of the results of the testing not later than 24 hours after the completion of the testing.***

***3. If a complaint is substantiated, the health authority or Commissioner, as applicable, may:***

***(a) Require the processor of the hemp product that is the subject of the complaint to pay the cost of the investigation; and***

***(b) Take any action authorized under the applicable provisions of chapter 446 or 585 of NRS.***

***4. As used in this section:***

*(a) "Commissioner" means the Commissioner of Food and Drugs appointed pursuant to NRS 439.135.*

*(b) "Cosmetic" has the meaning ascribed to it in NRS 585.060.*

*(c) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:*

*(1) Contains one or more of the following dietary ingredients:*

*(I) A vitamin;*

*(II) A mineral;*

*(III) An herb or other botanical;*

*(IV) An amino acid;*

*(V) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or*

*(VI) A concentrate, metabolite, constituent, extract or combination of any ingredient described in sub-subparagraphs (I) to (V), inclusive;*

*(2) Is intended for ingestion in the form of a tablet, capsule, powder, softgel, gel capsule or liquid or, if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and*

*(3) Is required to be labeled as a dietary supplement in accordance with 21 C.F.R. § 101.36.*

*(d) "Drug" has the meaning ascribed to it in NRS 585.080.*

*(e) "Food" has the meaning ascribed to it in NRS 585.100.*

*(f) "Health authority" has the meaning ascribed to it in NRS 446.050.*

**SMALL BUSINESS IMPACT STATEMENT 2023**

**PROPOSED AMENDMENTS TO NAC 439 THROUGH LCB FILE NO. R035-22P**

The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendments to Nevada Administrative Code (NAC) Chapter 439, relating to hemp, should have no adverse effect upon a small business or impact the formation, operation or expansion of a small business in Nevada.

A small business is defined in Nevada Revised Statutes NRS 233B as a "business conducted for profit which employs fewer than 150 full-time or part-time employees."

This small business impact statement is made pursuant to NRS 233B.0608 (3) and complies with the requirements of NRS 233B.0609. As required by NRS 233B.0608(3), this statement identifies the methods used by the agency in determining the impact of the proposed regulation on a small business in sections 1, 2, 3, and 4 below and provides the reasons for the conclusions of the agency in section 8 below followed by the certification by the person responsible for the agency.

**Background**

The Nevada Department of Health and Human Services is putting forth proposed changes (LCB File No. R035-22) to Nevada Administrative Code (NAC) Chapter 439. The change is a result of Senate Bill 114 (2021) and SB204 (2019) passed by the Nevada Legislature. Pursuant to NRS 233B.0608 (2)(a), the Division of Public and Behavioral Health has requested input from Retail Food Establishments.

SB209 and SB114 revise provisions related to food production in Nevada. The provision allows approved hemp products to be added ingredients in food products. Further, it defines "approved hemp component" to mean any component of hemp that the United States Food and Drug Administration has determined to be safe for human consumption.

The bill revises various provisions of existing law concerning hemp and the operation of food establishments at which food is not prepared or served for immediate consumption for the purpose of authorizing food that contains an approved hemp component to be produced or sold at such a food establishment under certain circumstances. The bill require that the product derived from hemp meet the following conditions.

(1) Is approved and determined by the United States Food and Drug Administration to be safe or generally recognized as safe for use as an ingredient in food intended for human consumption;
(2) Has been tested by an independent testing laboratory certified by the Department of Taxation under the provisions NRS 453A.368 and NAC 453A.650 through NAC 453A.678, inclusive;
(3) Is manufactured in accordance with state and federal law and regulation, and the regulations adopted by reference in Section 19; and,
(4) Is labeled in a manner that is not false or misleading and is in accordance with the applicable provisions of Chapters 446 & 585 of NRS and federal law.

The rule further ensures that a commodity or product containing hemp will be adulterated if it contains:

(1) THC in excess of the limit allowed by federal law;
(2) A pesticide which occurs on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550 or is approved for use by the United States Environmental Protection Agency is present in the product at a level which exceeds the level specified by the State Department of Agriculture or Environmental Protection Agency; or
(3) any other ingredient or additive or has been produced or handled in a manner which renders it adulterated per the state and federal laws and regulations applicable to that commodity type, including but not limited to the provisions set forth in NRS Chapter 585.

**1) A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.**

Pursuant to NRS 233B.0608 (2)(a), the Division of Public and Behavioral Health (DPBH) requested input from all Nevada-licensed food establishments.

A Small Business Impact Questionnaire, along with a copy of the proposed regulation changes, was sent by email to 1,503 state of Nevada licensed food establishments on August 9, 2022. DPBH also requested the information be sent out by all local Health Authorities: Carson City Health and Human Services (96 firms), Washoe County District Health Department (2,471 firms), and Southern Nevada Health District (12,558 firms).

The questions on the questionnaire were:
1) How many employees are currently employed by your business?
2) Will a specific regulation have an adverse economic effect on your business?
3) Will the regulation(s) have any beneficial effect on your business?
4) Do you anticipate any indirect adverse effects on your business?
5) Do you anticipate any indirect beneficial effects upon your business?

The survey was posted on August 4, 2022, as online survey to the website of the Environmental Health Section Trending Health Topics.

Individuals had the option to complete the survey online or mail, fax or email the completed form on or prior to Tuesday, September 22, 2022, to:

Teresa Hayes, Environmental Health Program Manager
Regulatory and Planning Section
500 Damonte Ranch Parkway #657A
Reno, NV 89521
Phone Number: (775) 546-5530
Email Address: thayes@health.nv.gov

**Summary of Response**

Out of the small-business impact questionnaires sent out when the questionnaire was distributed, two (2) responses were received.

| Summary Of Comments Received<br>Two (2) responses were received out of 16,628 small business impact questionnaires distributed. | | | |
|---|---|---|---|
| **Will a specific regulation have an adverse economic effect upon your business?** | **Will the regulation (s) have any beneficial effect upon your business?** | **Do you anticipate any indirect adverse effects upon your business?** | **Do you anticipate any indirect beneficial effects upon your business?** |
| Yes: 0 | Yes: 1 | Yes: 0 | Yes: 0 |
| No: 2 | No: 1 | No: 2 | No: 2 |
| No Response: 0 | No Response: 0 | No Response: 0 | No Response: 0 |

**2) Describe the manner in which the analysis was conducted.**

An online small business impact survey was distributed via email and posted publicly on the DPBH website, as described above. All questionnaire responses were conducted via the web, and none were received via email, fax, or mail. The proposed regulations, as well as existing regulations, were reviewed. The EHS analyzed the information from the questionnaire to determine if the proposed regulation had an impact on small businesses or if it was existing regulations that had an impact on small businesses. This statement was prepared by the EHS Manager

A Public Workshop will be held on Wednesday March 1, 2023 to continue to obtain feedback on the proposed regulations.

**3) The estimated economic effect of the proposed regulation on the small business which it is to regulate including, without limitation both adverse and beneficial effects and both direct and indirect effects.**

None of the respondents believe the regulations will have an adverse economic impact on their business.

**4) Provide a description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.**

The Division of Public and Behavioral Health has held several opportunities for the public to provide input and comments regarding the proposed regulations, including the economic impact the proposed regulations may have on the public. Modifications to the proposed regulations have been made as a result of this input. A Workshop will be held on Wednesday March 1, 2023, allowing for further input by retail regarding the proposed regulations and how they will impact the firms. These comments will be taken into consideration for possible further revisions to the regulations to reduce the economic impact on facilities.

**5) The estimated cost to the agency for enforcement of the proposed regulation.**

There is no direct cost to the agency for enforcement of the proposed regulations.

**6) If the proposed regulation provides a new fee or increases an existing fee, the total annual amount DPBH expects to collect and the manner in which the money will be used.**

The proposed regulations do not provide for a new fee or increase any existing fee.

**7) An explanation of why any duplicative or more stringent provisions than federal, state or local standards regulating the same activity are necessary.**

The proposed regulations are not duplicative or more stringent than any federal, state, or local standards.

**8) Provide a summary of the reasons for the conclusions of the agency regarding the impact of a regulation on small businesses.**

In summary, the proposed regulations (LCB File No. R035.22) to Nevada Administrative Code (NAC) Chapter 439. The change is a result of Senate Bill 114 (2021) and SB 204 (2019) sessions of the Nevada Legislature, and will not cause an adverse financial impact on the program or on small businesses. The regulations clarify how hemp can be used in a food product.

Any other persons interested in obtaining a copy of the summary may e-mail, call, or mail in a request to Teresa Hayes at the Division of Public and Behavioral Health at:

Division of Public and Behavioral Health
500 Damonte Ranch Parkway, Suite 657
Reno, NV 89521
Teresa Hayes
Phone: (775) 546-5530
Email: thayes@health.nv.gov

**Certification by Person Responsible for the Agency**

I, Lisa Sherych, Administrator of the Division of Public and Behavioral Health, certify to the best of my knowledge or belief a concerted effort was made to determine the impact of the proposed regulation on small businesses, and the information contained in this statement was prepared properly and is accurate.

Signature  Date: 02/07/2023

# NOTICE OF PUBLIC WORKSHOP

NOTICE IS HEREBY GIVEN that the Division of Public and Behavioral Health will hold a public workshop to consider amendments to Nevada Administrative Code (NAC) Chapter 439, relating to hemp.

The workshop will be conducted via videoconference beginning at 10:00 AM on Wednesday March 1, 2023 at the following locations:

Click here to join the meeting

Meeting ID: 232 513 297 389
Passcode: uvgRYN

Call 775-321-6111, phone conference ID: 890 107 184#

These workshops will be conducted in accordance with NRS 241.020, Nevada's Open Meeting Law.

**AGENDA**

1. Introduction of workshop process
2. Public comment on proposed amendments to Nevada Administrative Code Chapter 439.
3. General Public Comment

The proposed changes will revise Chapter 439 of the Nevada Administrative Code. The change is a result of Senate Bill 114 (2021) and SB204 (2019) passed by the Nevada Legislature. Pursuant to NRS 233B.0608 (2)(a), the Division of Public and Behavioral Health has requested input from Retail Food Establishments.

The proposed regulations provide provisions for the following:

Purpose: These regulations will bring NAC Chapter 439 into compliance with federal law and Senate Bill (SB) 114 (2021) and SB 204 (2019).

1) Effect from Legislation: SB209 and SB114 provides a definition of what is an approved hemp component in a food product. Further, it allows hemp to be added to a food product if the product has been determined to be safe for human consumption as per federal law in 21 CFR.
2) Who is Affected: SB 209 and SB 114 affect anyone who prepares food in Nevada in a licensed food establishment or a cottage food product. Both retail and manufactured food processors will need to ensure that hemp used as a component in the food product meets the definition provided by the U.S. Food and Drug Administration. Further, the regulation requires proper testing, pesticide content and labeling of the food product.
3) Fees: These regulations do not add any new fees or increase existing fee.

4) Requirements: These regulations revise various provisions of existing law concerning hemp and the operation of food establishments at which food is not prepared or served for immediate consumption for the purpose of authorizing food that contains an approved hemp component to be produced or sold at such a food establishment under certain circumstances. The regulations require that the product derived from hemp meet the following conditions.

    (1) Is approved and determined by the United States Food and Drug Administration to be safe or generally recognized as safe for use as an ingredient in food intended for human consumption.
    (2) Has been tested by an independent testing laboratory certified by the Department of Taxation under the provisions NRS 453A.368 and NAC 453A.650 through NAC 453A.678, inclusive.
    (3) Is manufactured in accordance with state and federal law and regulation, and the regulations adopted by reference in Section 19; and,
    (4) Is labeled in a manner that is not false or misleading and is in accordance with the applicable provisions of Chapters 446 & 585 of NRS and federal law.

5) Definitions:
    a. "Hemp product" means a commodity or product containing hemp which is intended for human consumption or any other commodity or product that purports to contain cannabidiol with a THC concentration that does not exceed the maximum THC concentration established by federal law.
    b. "Process" means to manufacture, store for distribution, package or repackage a hemp product.
    c. "Processor" means a person or entity who processes a hemp product.
    d. "Cannabinoid" means THC, tetrahydrocannabinolic acid, cannabidiol or cannabidiolic acid.
    e. "Terpenoid" means alpha-bisabolol, alpha-humulene, alpha-pinene, alphaterpinolene, beta-caryophyllene, beta-myrcene, caryophyllene oxide, limonene or linalool.
    f. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that: (1) Contains one or more of the following dietary ingredients: (I) A vitamin; (II) A mineral; (III) An herb or other botanical; (IV) An amino acid; (V) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or (VI) A concentrate, metabolite, constituent, extract or combination of any ingredient described in sub-subparagraphs (I) to (V), inclusive; (2) Is intended for ingestion in the form of a tablet, capsule, powder, softgel, gel capsule or liquid or, if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and (3) Is required to be labeled as a dietary supplement in accordance with 21 C.F.R. §

6) Federal Regulation: The proposed regulations do not provide provisions that are more stringent than a federal regulation that regulates the same activity.
7) Highlights: <u>The amendment to the law enables hemp to be used in food, drug or cosmetic products in Nevada.</u>

Members of the public may make oral comments at this meeting. Persons wishing to submit written testimony or documentary evidence may submit the material to Teresa Hayes at the Division of Public and Behavioral Health at:

Division of Public and Behavioral Health
500 Damonte Ranch Parkway, Suite 657
Reno, NV 89521
Teresa Hayes
Phone: (775) 546-5530
Email: thayes@health.nv.gov

Members of the public who require special accommodations or assistance at the workshops are required to notify Teresa Hayes in writing to the Division of Public and Behavioral Health, 500 Damonte Ranch Parkway, Suite 657 Reno, NV 89521, or by calling (775) 546-5530 at least five (5) working days prior to the date of the public workshop.

You may contact Teresa Hayes by calling (775) 546-5530 for further information on the proposed regulations or how to obtain copies of the supporting documents.

A copy of the notice and the proposed regulations are on file for inspection and/or may be copied at the following locations during normal business hours:

List of offices where the proposed regulation will be on file for inspection.

1. Division of Public and Behavioral Health- 4150 Technology Way, First Floor Lobby, Carson City, NV 89706
2. Division of Public and Behavioral Health- 500 Damonte Ranch Parkway, Ste. 657, Reno, NV 89521
3. Southern Nevada Health District- 280 S. Decatur Blvd., Las Vegas, NV 89107
4. State Library and Archives- 100 Stewart St., Carson City, NV 89701

A copy of the regulations and small business impact statement can be found on the Division of Public and Behavioral Health's web page: https://dpbh.nv.gov/Reg/Trending_EHS/Trending_Health_Topics/

A copy of the public workshop notice can also be found at Nevada Legislature's web page: https://www.leg.state.nv.us/App/Notice/A/

A copy of this notice has been posted at the following locations:

1. Division of Public and Behavioral Health, 4150 Technology Way, First Floor Lobby, Carson City, NV 89706
2. Nevada State Library and Archives, 100 Stewart Street, Carson City, NV 89701
3. Legislative Building, 401 S. Carson Street, Carson City, NV 89701
4. Southern Nevada Health District, 280 S Decatur Blvd, Las Vegas, 89107

Copies may be obtained in person, by mail, or by calling the Division of Public and Behavioral Health at (775) 546-5530.

Per NRS 233B.064(2), upon adoption of any regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal

reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.